

# QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2021 SKQB 171**

Date: **2021 06 04**  
Docket: QBG 442 of 2021  
Judicial Centre: Saskatoon

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BETWEEN:

ESTHER HOLLIDAY

APPLICANT

- and -

PRAIRIE HEIGHTS CONDOMINIUM CORPORATION  
and/or THE OWNERS: CONDOMINIUM PLAN  
NO. 83S12797

RESPONDENTS

## Appearances:

|                        |   |
|------------------------|---|
| Thomas M. Baldry       | for the Applicant                                       |
| No one                 | for Prairie Heights Condominium Corporation             |
| Daniel B. Alcorn       | for Larry Bozek and Southshore Group of Properties Inc. |
| Michael R. Scharfstein | for the Estate of Tapio Lindholm                        |
| Roberta Korven         | self-represented unit owner                             |

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FIAT  
June 4, 2021

ELSON J.

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## Introduction

[1] The seven storey, 44-unit condominium building, known as “Prairie Heights” [Building], has seen better days.

[2] On May 6, 2021 the Saskatoon Fire Department [SFD] ordered the

closure of the Building, located at 1416 20<sup>th</sup> Street West in Saskatoon, after a history of problems over the past two years. These problems have included constant vandalism, squatting, illicit drug use and violence, including at least one homicide. The most recent and culminating event was a water leak that has developed in a number of units, eventually pooling in the bottom of the elevator shaft.

[3] At the time of this writing, the Court has received no information as to when, or under what circumstances, the SFD will permit the Building to reopen.

[4] To compound matters, the Director of Community Operations [Director] for the Province of Saskatchewan sought and obtained from this Court a community safety order [CSO] directing the closure of more than half the units in the Building. The CSO was issued pursuant to *The Safer Communities and Neighbourhoods Act*, SS 2004, c S-0.1. While the CSO has legal force, the SFD's closure order presently mutes its practical effect. That circumstance will change when the SFD order is removed or substantively varied.

[5] The condominium units in the Building are ostensibly managed by the respondent, Prairie Heights Condominium Corporation [PHCC] and the PHCC board [Board]. That said, for all practical purposes, PHCC has ceased any meaningful existence. The Court was told that the Board has not met since February 2021. All but one member of the Board has resigned, leaving it without the minimum number of Board members required by its bylaws to carry on.

[6] The applicant in this matter, Esther Holliday, is a tenant of one of the units owned by her son. Along with the other tenants and owner occupants, Ms. Holliday has been displaced from her home.

[7] Ms. Holliday brings this application to appoint an administrator to manage the Building in place of PHCC. The application is brought pursuant to s. 101

of *The Condominium Property Act, 1993*, SS 1993, c C-26.1 [CPA].

[8] The application was filed with this Court on April 19, 2021, before the SFD ordered closure. It originally came before the Court in Chambers on May 3, 2021, when Acton J “tentatively” appointed Clayton Barry, a partner in the firm of McDougall Gauley LLP, as administrator. The appointment was tentative in the sense that the terms and conditions for the appointment had not yet been formalized. The application was adjourned to allow that process to continue. When the matter came before me, on May 12, 2021, counsel for certain unit owners asked to be heard. At their request, the Court agreed to a further adjournment to May 27, 2021, primarily to allow an opportunity for interested parties to re-activate PHCC. When the matter returned to Chambers on the adjourned date, counsel for one of the owners requested a further adjournment, a request that was vigorously opposed by Ms. Holliday. I reserved my decision on that request.

[9] For the reasons that follow, I am satisfied that the request for a further adjournment must be denied. Further, and more importantly, I am satisfied that an order for the appointment of an administrator, on the terms and conditions set out herein, shall issue.

### **Background Facts**

[10] The supporting evidence for the application comes from two affidavits, one by Ms. Holliday and the other from Geoff Wilkie, a former unit owner and member of the Board. I will also consider evidence from the Director’s application for the CSO.

[11] Until the SFD closed the Building, Ms. Holliday had lived there since the summer of 2018. She is a tenant, living in the two-bedroom unit owned by her son, Jason Holliday. In lieu of rent paid to her son, Ms. Holliday pays the condominium fees, taxes, insurance and utilities for the unit.

[12] Ms. Holliday deposed that, when she first moved to the Building, there were few problems. The unit occupants were generally quiet and kept to themselves. At the time, the Building was managed by a property management company under a contract with PHCC.

[13] Things began to change in mid-to-late 2019 and progressively became worse. Issues raised by Ms. Holliday include the following:

- a. illicit drug use in common areas, resulting in discarded needles being left behind, primarily in stairwells;
- b. harassment and threatening behaviour in the common areas from various individuals, many of whom do not reside in the Building;
- c. damaged and inoperable locks to exterior doors, resulting in unrestricted access;
- d. squatters staying in hallways and stairwells, some of whom relieve themselves in the common areas;
- e. discarded trash and refuse in the hallways and stairwells;
- f. trash and refuse thrown from balconies into the parking garage below, rendering it unusable;
- g. periodic fires in the Building;
- h. broken elevator;
- i. inadequate heating;
- j. inadequate hot water heater and frequent plumbing leaks;

k. fire hoses on each floor being turned on.

[14] In addition to these issues, Ms. Holliday deposed to the “constant presence” of either or both the SFD and the Saskatoon Police Service [SPS] at the Building. To her knowledge, there have been two homicides in or around the Building, one involving a person Ms. Holliday had previously seen squatting in the Building.

[15] Mr. Wilkie had been involved with the Building for almost 10 years before Ms. Holliday’s tenancy. Mr. Wilkie bought a unit in the Building in 2008, which he used exclusively as a revenue property. He sold his property in January 2021. Mr. Wilkie was also involved in the governance of the Building. He served on the Board from 2012 until he sold his unit. For the period from 2014 to 2019, he served as president of the Board.

[16] For the first seven years that Mr. Wilkie owned his unit, he understood there were few problems. In his opinion, the Board was active and involved. It also had a reasonably good working relationship with its property management company, until that company terminated its contract in 2015.

[17] Mr. Wilkie deposed that, beginning in and around 2013-2015, problems began developing in the Building. In large measure, Mr. Wilkie attributes this to a pronounced shift from owner occupied units to landlord-tenant units. A number of tenants began vandalizing common areas and facilities in the Building. This included pulling fire alarms, flooding the property and blocking garbage chutes.

[18] After 2015, things became worse. The Board began receiving complaints about drug dealing in the Building, drug use in common areas, prostitution, graffiti and related gang activity. Security cameras were eventually installed but they did not lessen the problems.

[19] Mr. Wilkie deposed that, in early 2020, problems became so severe that the Board hired three security companies to provide on-site security. The first company lasted one day, while the second company lasted five days. Both these companies terminated the arrangements, citing health and safety concerns for their employees. The third company was more effective, but the cost to keep the company on became more than PHCC could cover. The arrangement dissolved in January 2021. Thereafter, there has been no meaningful security in the Building.

[20] Both Ms. Holliday and Mr. Wilkie attribute many of the problems in the Building to the tenants of two owners – Larry Bozek and Tapio Lindholm. Mr. Lindholm died on January 26, 2021. Mr. Wilkie deposed that the Board had, on more than one occasion, raised concerns about tenants living in the suites controlled by these two owners. In the case of Mr. Bozek, the Board had security camera footage showing his tenants doing damage. Mr. Wilkie said that the Board confronted Mr. Bozek about these tenants on multiple occasions, but he refused to evict them.

[21] The assertions about Mr. Bozek and the late Mr. Lindholm are borne out in the evidence presented by the Director in support of the CSO. The court file for that matter is QB No. 491 of 2021, in the Judicial Centre of Saskatoon. I am satisfied that the Court can take judicial notice of the file contents in this application. Further, as Mr. Bozek and Mr. Lindholm's estate were served with the Director's application and actually consented to the CSO, neither owner is prejudiced by the Court doing so.

[22] In support of the Director's CSO application, the Court received eight affidavits, including an affidavit from Mr. Wilkie, restating much of what he deposed to in this application. The other affidavits included ones from three police officers, an investigator with the Safer Communities and Neighbourhoods program (who is a former police officer), the Assistant Fire Chief with SFD and a Fire Inspector/Investigator with SFD.

[23] Included in exhibits to the affidavits there are more than 100 photographs of scenes and conditions in the Building and immediately adjacent to it. To describe these photographs as disturbing would be an understatement. The scenes depicted in the security photographs of common areas include evidence of drug injections, violent activity, people with weapons, people relieving themselves and people sleeping in hallways and stairwells. Photographs taken of conditions in the Building show suites and common areas that are almost overwhelmed with trash, injection needles, scattered clothing, broken furniture as well as serious damage to walls and fixtures.

[24] The evidence presented also included information about what Ms. Holliday described as the “constant presence” of the SPS and the SFD. Specifically, there was evidence that, since 2014, the SPS received 2,459 calls for service at the Building. Of those calls, 1,654 of them were received since 2017. Meanwhile, since 2015, SFD received 239 calls for service at the Building. Of those calls, 165 of them were received since 2018.

[25] It is notable, and consistent with the evidence of both Ms. Holliday and Mr. Wilkie, that the suites closed under the CSO were those owned by Mr. Bozek and Mr. Lindholm. The CSO closed all 15 units owned by Mr. Bozek and/or the company he controls, Southshore Group of Properties Inc., and all 11 units now owned by Mr. Lindholm’s estate. It is noteworthy that these 26 units represent almost 60% of the total units in the Building.

[26] Further to Mr. Bozek and the units he and his company owns, time does not permit me to describe all the Director’s evidence related to all the problems with these units. The affidavits filed revealed such things as: (1) evidence of fruitless interactions with the SPS, the Board, property managers and the Safer Communities and Neighbourhoods program [SCAN]; (2) Mr. Bozek’s efforts to evade SCAN; (3) Mr. Bozek’s lack of control over his units (including not knowing names of tenants and

allowing unit locks to be changed); and (3) negative and unfavourable decisions of the Office of Residential Tenancies, including one reported in *Prairie Heights v Little*, 2020 SKORT 1018.

[27] Before leaving the facts presented in this application, I should describe the evidence presented with respect to the governance of the Building through PHCC. This evidence largely came through the affidavits of Mr. Wilkie, both in this application and the Director's application.

[28] As earlier mentioned, Mr. Wilkie served on the Board for a number of years, including a period of time as its president. Mr. Wilkie deposed that, until 2020, the Board was active. Unfortunately, as problems increased in the Building, more and more owners were selling their units. This made it difficult for the Board to fill vacancies. Mr. Wilkie said that most of the remaining owners had no experience in governing a condominium building. Other owners had told Mr. Wilkie that they were afraid to become involved with PHCC because of the safety concerns and gang presence in the Building.

[29] At the end of 2020, Mr. Wilkie made the decision to quit the Board. A significant factor in his decision related to the issues experienced with Mr. Bozek. In Mr. Wilkie's view, Mr. Bozek had frustrated the ability of the Board to govern the Building effectively. In particular, Mr. Bozek stopped paying condominium fees on some of his units. Given the number of units that he and his company owned, PHCC experienced a significant loss of revenue. Eventually, after PHCC placed liens on Mr. Bozek's units, the mortgagees for the units remitted fees for a short time. However, this reprieve ended sometime in mid-2020. After that, the liens simply remained registered against the titles, without any payment being made. Mr. Wilkie deposed that, by the time he left the Board, Mr. Bozek and his company were more than \$60,000 in arrears on their condominium fees.



[30] Mr. Wilkie eventually reconsidered his decision to leave the Board and rejoined it for a short time, before selling his unit in January 2021. Even after he sold his unit, he tried to help the Board get the Building under control. Specifically, he arranged for an owners' meeting in February 2021. At that time, he found three members who were prepared to sit on the Board, one of whom was Ms. Holliday. Despite these efforts, the PHCC could not meaningfully function. A principal contributing factor in this regard was the lack of any continuity from the previous Board. There were no further meetings after February 2021.

### **Relevant Legislation**

[31] The statutory framework relevant to this application is set out in the *CPA*. The framework begins with s. 35, which sets out the duties of a condominium corporation that is constituted or continued under the statute. In this regard, s. 35 reads as follows:

**35(1)** A corporation is responsible for the enforcement of its bylaws and the control, management and administration of the units, and of the common property and common facilities.

(2) Without restricting subsection (1), the duties of a corporation include the following:

(a) to keep the common property, common facilities and services units in a state of good and serviceable repair and to maintain them properly;

(b) to comply with notices or orders by the local authority or any other public authority requiring repairs to the buildings or work to be done with respect to the parcel;

(c) to comply with any reasonable request for the names and addresses of the persons who are members of the board; and

(d) to file any prescribed returns with the Director.

[32] The framework then turns to ss. 37 and 39, pertaining to the corporation's board of directors, which is to be constituted in accordance with the corporation's

bylaws. The duties of a board are set out in s. 39, which reads as follows:

**39(1)** Subject to any restriction imposed or direction given at a general meeting, a board shall exercise the powers and perform the duties of the corporation.

(2) A board shall:

(a) keep proper books of account with respect to all moneys received and all moneys expended by the board and the matters with respect to which the receipts and expenditures relate;

(b) for each annual general meeting, prepare financial statements with respect to all moneys of the corporation, including the moneys received and moneys expended by the corporation;

(c) maintain financial records of all the assets and liabilities of the corporation;

(d) submit to the annual general meeting an annual report that consists of the financial statements mentioned in clause (b) and any other information determined by the board or required by a resolution passed at a general meeting;

(e) keep minutes of its proceedings;

(f) keep minutes of proceedings at general meetings;

(g) make the books of account mentioned in clause (a) available for inspection at all reasonable times on the application of an owner or a person authorized in writing by an owner.

(3) Subject to the regulations, the financial statements prepared for the annual general meeting pursuant to clause (2)(b) must be audited by a prescribed person.

[33] The Court's jurisdiction to appoint an administrator is set out in s. 101 of the *CPA*. This provision reads as follows:

**101(1)** A corporation or any person having an interest in a unit may apply to the court for the appointment of an administrator.

(2) The court may, in its discretion, appoint an administrator for an indefinite period or for a fixed period on any terms and conditions as to remuneration or otherwise that it considers appropriate.

(3) The remuneration and expenses of an administrator appointed pursuant to this section are expenses mentioned in clause 55(2)(a) that

may be paid out of the common expenses fund.

(4) An administrator appointed pursuant to this section has the powers and duties of the corporation or any of those powers and duties that the court orders and, while those powers are vested in the administrator, the board and the corporation may not exercise those powers or perform those duties.

(5) An administrator may delegate any of the powers vested in the administrator by the court.

(6) On the application of the administrator or a person mentioned in subsection (1), the court may remove or replace the administrator.

[34] It is noteworthy that, where an administrator is appointed, s. 101(3) provides for the administrator's remuneration and expenses to be paid from the common expenses fund. This is one of the two types of funds that a condominium corporation can establish under s. 55 of the *CPA*, the other type of fund being a reserve fund. For the purposes of this application, the relevant provisions of s. 55 are ss. 55(1) and (2), which read as follows:

**55(1)** The corporation shall establish the following funds for the purposes set out in subsections (2) and (3):

- (a) a common expenses fund; and
- (b) subject to subsection (6), one or more reserve funds.

(2) A common expenses fund is established for the purpose of providing for the payment of the following expenses, other than expenses that are to be paid out of the reserve fund:

(a) expenses incurred in the control, management and administration of the common property, common facilities and services units, enforcement of the bylaws of the corporation and addition of additional common property, common facilities and services units;

(a.1) expenses incurred in the control, management and administration of any units or portions of units designated in any bylaw passed pursuant to clauses 47(1)(f.1) and (i.1);

(b) premiums of insurance; and

(c) expenses incurred in the discharge of any other obligation of the corporation.

[35] Under s. 57 of the *CPA*, a condominium corporation may levy contributions to the common expenses fund provided that it does so in accordance with the procedure prescribed in the statute's regulations, *The Condominium Property Regulations, 2001*, RRS c C-26.1 Reg 2. Where unit owners are in arrears for their contributions, made to either the common expenses fund or a reserve fund, the condominium corporation may register a lien against the title for the amount of unpaid contributions and costs incurred relative to that registration.

[36] It is also noteworthy that s. 63.1 of the *CPA* creates an extraordinary priority for liens registered under s. 63, something Danyliuk J. described as "a form of super-priority". See *Smooke v Rosemont Estate Condo Corp. 101222494*, 2017 SKQB 201 at para 59, 80 RPR (5th) 277 [*Smooke*]. The relevant provisions of s. 63.1 are the first two subsections, which read as follows:

**63.1(1)** Subject to subsections (2) and (6), an interest based on a lien that is registered pursuant to section 63 has priority over every other registered or unregistered interest, even if that other interest existed before the lien arose.

(2) An interest registered pursuant to section 63 does not have priority over:

(a) a claim for taxes, charges, rates or assessments levied pursuant to *The Local Improvements Act, 1993* or any assessing Act; or

(b) a prescribed interest or claim.

### **Positions of the Parties**

[37] In her originating application, Ms. Holliday's primary request was for an order requiring PHCC to fulfil its statutory duties under s. 35 and s. 39 of the *CPA*. The request for an administrator was described as an alternate remedy. Her counsel advises that Ms. Holliday has now resiled from her primary request. Given the developments since the application was first filed, including the closure of the Building and the CSO, she is convinced the Court had little choice but to appoint an administrator.

[38] Mr. Bozek and his company take a different position. In his affidavit, he expresses the view that the problems in the Building can be solved through a re-activated PHCC, with a “dedicated” Board and a competent property manager. He goes on to express interest in joining the Board once he pays the arrears in his condo fees. Interestingly, Mr. Bozek references only the fees owing on the two units he owns personally, he says nothing about any fees owing on the units that his company owns.

[39] In the end, Mr. Bozek simply suggests that the Court should adjourn this matter for another four weeks to allow for the Board to be reconstituted and to allow for a new property manager. Through his counsel, Mr. Bozek agreed that a progress report in this regard could be provided after the second week of a four-week adjournment.

[40] As for Mr. Lindholm’s estate, its counsel advised that the estate presently takes no position. That said, it had earlier been expressed by counsel that the estate would cooperate in any steps taken to reset PHCC.

### **Law and Analysis**

[41] In Saskatchewan, there are few authorities that have addressed the appointment of an administrator under s. 101. Aside from the already cited decision in *Smooke*, there is the decision of this Court in *Sharpe v Condominium Plan No. 87R23752*, 1998 CarswellSask 460 (WL) (Sask QB) and the judgment of the Saskatchewan Court of Appeal in *Goertz v The Owners Condominium Plan No. 98SA12401*, 2018 SKCA 41, [2018] 12 WWR 195 [*Goertz*].

[42] In *Goertz*, the self-represented appellant had raised a number of issues in the Court of Appeal, some of which had not been raised in his notice of appeal. One of those issues related to the appointment of an administrator on the basis that the condominium corporation in question had not conducted itself appropriately. Despite

the issue not appearing in the notice of appeal, the Court addressed it, and found no evidence to support an appointment. In doing so, Ottenbreit J.A. described the circumstances under which a court could exercise its discretion to appoint an administrator. In this respect, he wrote the following at paras. 163-65:

163 Based on s. 101, the appointment of an administrator is discretionary and can be made on any terms the court considers appropriate. There is nothing in s. 101 that points to the factors that inform such a decision. There is little jurisprudence regarding this section. In *Sharpe v. Condominium Plan No. 87R23752*, 1998 CarswellSask 460 (Sask. Q.B.) (WL), the applicant argued that based on the failure to hold an annual meeting and provide certain financial information to the owners, the appointment of an administrator was necessary. The Chambers judge, in dismissing that application, observed that normally an administrator is appointed to investigate and resolve financial irregularities or mismanagement that could have an adverse affect on interested parties. I agree that these factors cited as reasons to appoint an administrator inform a decision under s. 101: see also *Smooke v. Rosemont Estate Condo Corp. 101222494*, 2017 SKQB 201, 80 R.P.R. (5th) 277 (Sask. Q.B.).

164 In British Columbia, the parallel *Strata Property Act*, SBC 1998, c 43, provision allows for an order to be made if it “is in the best interests of the strata corporation” (s. 174(2)): a provision that is similar to s. 101 of the *CPA* reflects an exercise of discretion. In *Norenger Development (Canada) Inc. v. Strata Plan NW 3271*, 2016 BCCA 118 (B.C. C.A.) at para 44, (2016), 397 D.L.R. (4th) 435 (B.C. C.A.), the Court observed that the overarching purpose of that provision was to address dysfunction within the corporation. Section 101 of the *CPA* has an identical purpose.

165 The statutory responsibility to manage and administer the corporation under s. 35 lies with its elected board pursuant to s. 39(1). While in some cases the appointment of an administrator is warranted, it is a drastic step that seriously undercuts that responsibility. Any application for the appointment of an administrator will need cogent evidence that the board is no longer able to adequately discharge its statutory duties and that the corporation is in a state of such dysfunction that its actions will adversely affect the collective owners. Whether there is such dysfunction must be decided on a case-by-case basis.

[43] As noted from the above passage, Ottenbreit J.A. essentially endorsed the perspective adopted by the British Columbia Court of Appeal in *Norenger Development*

(Canada) Inc. v Strata Plan NW 3271, 2016 BCCA 118, 397 DLR (4th) 435 [Norenger]. In *Norenger*, at para 44, the Court recognized that the overarching purpose of s. 174 of the *Strata Property Act*, SBC 1998, c 43 (the British Columbia equivalent of s. 101 of the *CPA*) is to address dysfunction within the strata corporation. In this recognition, the Court also endorsed certain factors to be considered from an earlier decision. To this point, Kirkpatrick J.A. wrote the following at para. 43:

43 Under s. 174(2) of the *Act*, an administrator may be appointed if, in the court’s opinion, “the appointment of an administrator is in the best interests of the strata corporation”. In *Lum v. Strata Plan VR519*, 2001 BCSC 493 [*Lum*], Mr. Justice Harvey identified the following factors as relevant to the court’s exercise of discretion to appoint an administrator under s. 174:

- (a) whether there has been established a demonstrated inability to manage the strata corporation,
- (b) whether there has been demonstrated substantial misconduct or mismanagement or both in relation to affairs of the strata corporation,
- (c) whether the appointment of an administrator is necessary to bring order to the affairs of the strata corporation,
- (d) where there is a struggle within the strata corporation among competing groups such as to impede or prevent proper governance of the strata corporation,
- (e) where only the appointment of an administrator has any reasonable prospect of bringing to order the affairs of the strata corporation.

[44] I now assess these references to the applicable law in the context of the application before the Court.

[45] The decisions in *Goertz* and *Norenger* make it clear that the appointment of an administrator should be seen as a “drastic” step in the operation and management of a condominium building. Having regard to the evidence in this case, it would be difficult to find a more drastic set of circumstances, or a more obvious case of dysfunction in the management of a condominium building.

[46] The evidence satisfies me that, for all intents and purposes, PHCC and its Board have ceased to exist. In saying this, I cannot blame the Board members who did the best they could prior to January 2021. The evidence satisfies me that the members faced extraordinarily difficult, if not impossible, circumstances. I am satisfied that Mr. Bozek played a central role in creating these circumstances. According to the evidence, he ignored meaningful efforts by the Board and SCAN to rectify the problems that were primarily attributed to the tenants in his units. He ignored calls to evict troublesome tenants and then stymied the Board's financial ability to address these issues independently by refusing to pay condominium fees.

[47] More significantly, and again based on the evidence before the Court, I have no confidence in the promises Mr. Bozek now makes. Those promises amount to meaningless and barely audible whispers as compared to the loud shouts of his history in this Building. In short, I simply do not believe his promises.

[48] Addressing more specifically the factors referenced in *Norenger*, I am satisfied that the appointment of an administrator is necessary to bring order to the affairs of PHCC and the Building it is to manage. I am also satisfied that the appointment of an administrator is the only circumstance that would provide for any reasonable prospect of bringing order to the affairs of PHCC.

[49] As for the terms and conditions set out in the draft order presented by Ms. Holliday's counsel, I find that it reflects a reasonable attempt to address the issues presented in this case. Subject to a few wording changes set out below, as well as one rather specific concern, I think the order should issue.

[50] My specific concern relates to the clause that sets out the "administrator's charge". That clause stipulates that the administrator would be granted a charge on the property, accounts and assets of PHCC as well as each unit covered under the



condominium plan. While I understand the purpose, and possibly even the need, to provide for such a charge, I am not convinced that the Court has the jurisdiction to create it.

[51] In saying this, I acknowledge s. 101(3) of the *CPA* allows for the administrator's remuneration and expenses to be paid out of the common expenses fund established under s. 55. I further understand that a lien registered against a unit owner's title, for arrears in contributions to that fund, carries with it the "super priority" described in s. 63.1 of the *CPA*. Having said all this, it seems to me that the simple creation of an administrator's charge, with a "super priority", circumvents the lien creation and registration process contemplated in the *CPA*.

[52] Instead of creating an administrator's charge, I am much more comfortable with an order that authorizes the administrator, standing in the place of PHCC, to levy condominium fees, including contributions to the common expenses fund. It should follow that the administrator would also have the authority to register interests based on a lien against the title of a unit for unpaid contributions. To the extent that the administrator is entitled to payment of his remuneration and expenses from these contributions, the priority contemplated in s. 63.1 would be in place.

## **Conclusion**

[53] In the result, the following order shall issue:

- a. Pursuant to s. 101 of *The Condominium Property Act, 1993*, SS 1993, c C-26.1 [*CPA*], Clayton B. Barry is appointed as administrator [Administrator] of the Prairie Heights Condominium Corporation [PHCC], located at 1416 20<sup>th</sup> Street West, Saskatoon, Saskatchewan.
- b. The Administrator is authorized to exercise the powers of PHCC,

including, *inter alia*, the right and ability to levy condominium fees as contemplated by ss. 56, 57 and 58 of the *CPA*, and to take such actions as are necessary and appropriate to enforce the payment of condominium fees by an owner pursuant to s. 63 of the *CPA* and any other relevant provisions.

- c. The Administrator is appointed for an initial term of 180 days, which term shall commence on the date this order is issued. The Administrator may apply to shorten or extend the term of the appointment.
- d. The Administrator shall prepare a first report and provide it to the registered owners and the Court, within 90 days of the date this order is issued [Initial Report].
- e. The Initial Report shall describe what the Administrator has found, the steps the Administrator has taken to administer and re-activate PHCC, and the further steps that the Administrator intends to take in administering PHCC, together with the following:
  - i. present and future expenses, including operating expenses, reserve fund expenses and special assessments (actual or proposed); and
  - ii. recommendations with respect to the security of the condominium building and the maintenance and repair needed, as well as how such matters should be funded.
- f. The Administrator shall be entitled to payment by PHCC of his remuneration (reasonable fees) and expenses from its common expenses fund
- g. The Administrator's remuneration (reasonable fees) shall be set at a rate

not to exceed \$400 per hour for all work performed by the Administrator and for all work performed by other lawyers at McDougall Gauley LLP at such lawyers' normal hourly rate, not exceeding \$400 per hour.

- h. Within 14 days of being served with a copy of this Order, any past or present member of the board of directors of PHCC shall provide the Administrator with copies of the following documents in his or her possession and shall otherwise cooperate with the reasonable requests of the Administrator in all respects, including, but not limited to, the following:
  - i. all contracts that involve the repair, maintenance, upkeep or security of the common property;
  - ii. banking records;
  - iii. insurance contracts and records;
  - iv. current contact information for each owner and/or tenant of a unit under management by PHCC; and
  - v. any document relevant to the administration of PHCC.

Where a past or present member of the board of directors does not have in his or her possession a document or record described above or requested by the Administrator, that has knowledge of same, the member shall provide the Administrator with full particulars of such knowledge.

- i. The Administrator may retain counsel, including McDougall Gauley LLP, an accountant, a property manager and/or any other third party required to fulfil the terms of this order.
- j. The Administrator may, from time to time, apply to this Court for advice

and directions in the discharge of his powers and duties hereunder.

- k. Unless otherwise ordered by this Court, the Administrator will report to the Court from time to time, which reporting, unless the Court otherwise directs, is not required to be in affidavit form and may be considered by the Court as admissible evidence.
- l. Any interested party may apply to this Court to vary or amend this order on not less than fourteen (14) days' notice to the Administrator and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
- m. The Administrator shall cause a true copy of this order to be served on:
  - i. each owner of a condominium unit under management by PHCC by pre-paid ordinary mail at the address for service listed on the Information Services Corporation, Land Titles Registry title of each unit forming part of The Owners: Condominium Plan No. 83S12797, and such service shall be deemed to be good and sufficient service; and
  - ii. the Director of Corporations and the Land Registry as required by s. 65 of *The Condominium Property Regulations*, 2001, RRS c C-26.1 Reg 2.

[54] I shall remain seized with this matter in the event there are any issues relative to the wording of the order appointing the administrator, or incidental matters relating thereto. I shall remain similarly seized in the event counsel wishes to speak to the costs of this application.

\_\_\_\_\_  
J.  
R.W. ELSON